25312

No. 902

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 25312

PAUL GINSBURG,

Plaintiff-Appellant,

—against—

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

Defendant-Appellee.

APPELLANT'S [redacted] APPENDIX

PAUL GINSBURG
Appellant, Pro se
Carlton House
550 Grant Street
Pittsburgh 19, Pa.

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APPENDIX

Docket Entries

Date	*Proceedings*
May 11—53	Filed complaint & issued summons
May 15—53	Filed summons & return, served W. T. Johns, Secy & Treas 5-12-53
July 1—53	Filed affdvt of staying of action (Pending in WD of Pa.)
Sept. 21—53	Filed supplemental affdvt. re stay.
Apr. 12—56	On call of special pre-trial before Knox, J., —Hearing adjd to 10/8/56—
Oct. 8—56	On call of special pre-trial before Knox, J., Hearing adjd to 11/8/56—
Oct. 26—56	Special pre-trial Calendar before Knox, J. —Cancelled—
Jan. 21—57	On call for review—G. R. 21 before McGohey, J. Adj. 10/28/57
Oct. 28—57	On call for review—G. R. 21 before Edelstein, J.—Adjd to 12-4-57—
Dec. 6—57	Filed order—pltff shall file note of issue within 120 days, etc. or action may be dismissed—Bicks, J.—Mailed notice of entry 12-9-57.
Apr. 3—58	On call of calendar before Sugarman, J.—Application withdrawn.
Apr. 8—58	Filed Note of Issue & statement pursuant to Cal. Rule 5.—filed Note of issue pursuant to Judge Bick's order dated 12-6-57.

Docket Entries

—B—

Date	*Proceedings*
May 6—58	Filed pltff's affdvt & notice of motion for summary judgment—ret. 5-15-58.
May 8—58	Filed deft's affdvt of service by mail.
May 8—58	Filed affdvt & notice of cross-motion—Make order of USDC, WD Pa order of this court, etc.—ret. 5-15-58.
May 15—58	Memo endorsed on motion filed 5-6-58—Denied—See decision on cross-motion—Bicks, J.
May 15—58	Memo endorsed on cross-motion filed 5-8-58—Case herewith enjoined—See orders of USDC, WD of Pa & Phoenix, Ariz. (copies in file)—enter order on notice—Bicks, J.
June 27—58	Filed pltff's opposing affdvt to proposed order.
June 27—58	Filed pltff's supporting affdvt for summary judgment.
June 27—58	Filed pltff's unsigned counter-order.
June 27—58	Filed order & judgment—Pltff's motion for summary judgment denied; affdvts of A. Kaiser dated 7-1-53 & 9-18-53 constitute deft's answer; pltff permanently enjoined from prosecuting this or any other action etc.—Bicks, J.—Mailed notice of entry 6-30-58.
July 3—58	Filed copy of order filed 6-27-58 w/notice of entry.

Docket Entries

Date	*Proceedings*
July 8—58	Filed pltff's affdvt & notice of motion to vacate order of 6-27-58 and for summary judgment—ret. 7-14-58 before Bicks, J.
July 14—58	Filed pltff's Reply Affidavit.
July 25—58	Filed pltff's notice of appeal—Mailed copy to H. Bell 7-25-58.
July 25—58	Filed appeal bond—New Amsterdam Cas. Co.
July 29—58	Filed Opinion #24,510—Pltff's motions for reargument, etc. denied—So ordered—Bicks, J.—Mailed notice of entry 7-29-58.
July 29—58	Filed Opposing affdvt.

Complaint in Assumpsit

—1—

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 85-33

[SAME TITLE]

Paul Ginsburg, plaintiff, seeks to recover from defendant the sum of Thirty Thousand ($30,000.00) Dollars, with interest thereon, less credits properly chargeable against the said sum on the company books, upon the following cause of action.

1st. Jurisdiction in the within action is founded upon diversity of citizenship of the parties and an amount in issue in excess of Twenty-seven Thousand ($27,000.00) Dollars.

2nd. Plaintiff is a resident of the City of Pittsburgh, Allegheny County, Pennsylvania.

3rd. Defendant is a mutual life insurance company engaged in the sale of life insurance policies, inter alia, and has its principal office in the City of New York, New York County, State of New York, within the said judicial district.

4th. Plaintiff is the owner and beneficiary of two policies of life insurance issued by defendant upon the life of Samuel A. Ginsburg, now deceased. The said policies are numbered by defendant as 6149 400 and 6149 401, in an aggregate face amount of Thirty Thousand ($30,000.00)

Dollars. The said policies, together with application for payment thereon, are in the possession of defendant and are not presently available to plaintiff for the purposes of the within action, but they are by reference hereto made part hereof and in the course of the litigation shall be amended to the within complaint upon procurement thereof.

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5th. Under the terms of the said policies, defendant agreed that in consideration of premiums acknowledgedly received by them, that they would pay to the beneficiary or owner of the said policies the aggregate sum of Thirty Thousand ($30,000.00) Dollars, less credits properly chargeable against the said face amounts for loans made thereon, and that the said payments would be made upon proof of death of the insured, to-wit: Samuel A. Ginsburg, now deceased.

6th. All of the terms and conditions of the said policies have been fully complied with by the said insured during his lifetime and by plaintiff. On the 7th day of April, 1953, Samuel A. Ginsburg, deceased insured, died at Phoenix, Arizona, and due and proper notice and proof of death was filed with defendant in accordance with the terms of the said policies.

7th. Although there is due and owing to plaintiff in excess of Twenty-seven Thousand ($27,000.00) Dollars upon the said policies, together with interest, and although plaintiff has made repeated demands upon defendant for payment of the said sums justly due and owing to plaintiff; nevertheless, defendant has refused or neglected and still refuses and neglects to make payment thereof to plaintiff.

WHEREFORE, plaintiff demands of defendant a sum in excess of Twenty-seven Thousand ($27,000.00) Dollars as

may be more specifically determined upon production by defendant of the said policies and its records in regard thereto before this Honorable Court upon hearing hereon.

A jury trial is hereby demanded.

PAUL GINSBURG
Plaintiff, pro se

(Duly verified.)

Order to File Note of Issue in 120 Days

The above entitled action having come on for review on the 4th day of Dec. 1957, before the Hon. Alexander Bicks, J., United States District Judge, and after hearing counsel, it is

ORDERED that the Plaintiff shall file a note of issue for trial, or take other action to obtain a determination of the above entitled action within 120 days from the date of this order, and it is further

ORDERED that if such action is not taken within the said period, the above entitled action may be dismissed without further notice, for want of prosecution, without costs.

Dated, New York, N. Y.
Dec. 4, 1957

ALEXANDER BICKS
United States District Judge.

Note of Issue

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For Plaintiff	Paul Ginsburg, Pro se c/o Robert Hoppman Attorney at Law 477 Madison Avenue New York, N. Y. Tel. PLaza 1-1140
Attorney for Defendant	No appearance entered
Defendant	The Mutual Life Insurance Company of New York 1740 Broadway New York, N. Y. Tel. JUdson 6-4000 Ex. 410
Time Answer Received	No answer filed
Nature and Object of Action	For proceeds of life insurance policies
By whom Jury demanded ..	Plaintiff
Date of Such demand	May 11, 1953

Dated: New York, N. Y.
April 2, 1958

Plaintiff's Motion for Summary Judgment

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Plaintiff, Paul Ginsburg, moves the Court, under Rule 56 of the federal Rules of Civil Procedure, to enter summary judgment for the plaintiff and against the defendant forthwith pursuant to the Complaint, on the ground that it is apparent and evident from the record and the supporting affidavit annexed hereto that there is no genuine issue as to any material fact herein and that plaintiff is entitled to judgment as a matter of law in the sum of $27,456.38, the principal amount sued for, together with interest thereon from April 7, 1953, at the rate of 6% and the costs and disbursements of this proceeding.

PAUL GINSBURG
Plaintiff, pro se
c/o Attorney Robert E. Hoppman
477 Madison Avenue
New York, New York

Dated: 5 May 1958

Defendant's Cross-Motion

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SIR:

PLEASE TAKE NOTICE that upon all the proceedings heretofore had herein, and upon the affidavit of Carl F. Hollander, Esq., verified the 7th day of May, 1958, defendant will, upon the argument of the motion for a summary judgment made by plaintiff in this action and returnable on the 15th day of May, 1958, at 10:00 o'clock A. M., DST, in Room 506, United States Court House, Foley Square, New York City, New York, make a motion for an order:

1. Directing that the order of the United States District Court for the Western District of Pennsylvania, dated August 19, 1953, permanently enjoining and prohibiting plaintiff from further prosecuting the above entitled action be also made the order of this Court.

2. Directing the Clerk and Calendar Commissioner of this Court not to place the above entitled action on any Assignment Conference, Ready Day, or any other Trial Calendar until such time as it is shown that said order hereinabove referred to has been vacated or modified so as to permit said plaintiff to further prosecute this action.

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3. Granting such other, further and different relief as to the Court may seem just and proper.

Defendant's Cross-Motion

Dated: New York, May 7, 1958.

HAUGHTON BELL
Attorney for Defendant
Office and P. O. Address
1740 Broadway
New York 19, New York

To:

PAUL GINSBURG, Esq.
Plaintiff, pro se
c/o ROBERT E. HOPPMAN, Esq.
477 Madison Avenue
New York, New York

PAUL GINSBURG, Esq.
Plaintiff, pro se
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Order Entered June 27, 1958

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The following motions having been filed and brought on for hearing:

A. Plaintiff Paul Ginsburg's motion dated May 5, 1958 ~~for an order~~ pursuant to Rule 56 of the Rules of Federal Civil Procedure ~~for a motion~~ for a summary judgment.

B. Defendant The Mutual Life Insurance Company of New York s cross-motion for an order:

1. Directing that the order of the United States District Court for the Western District of Pennsylvania, dated August 19, 1953, permanently enjoining and prohibiting plaintiff from further prosecuting the above entitled action be also made the order of this Court.

2. Directing the Clerk and Calendar Commissioner of this Court not to place the above entitled action on any Assignment Conference, Ready Day, or any other Trial Calendar until such time as it is shown that said order hereinabove referred to has been vacated or modified so as to permit said plaintiff to further prosecute this action.

3. Granting such other, further and different relief as to the Court may seem just and proper.

Now on reading (1) the complaint herein, (2) the affidavits of Arthur Kaiser dated July 1, 1953 and September 18, 1953 submitted on behalf of defendant and on file in this Court, including the certified copy of an order permanently enjoining and prohibiting plaintiff Paul Ginsburg from prosecuting this action, said order being the

order entered by the United States District Court for the Western District of Pennsylvania in Civil Action No. 11521, an action instituted in said Court and subsequently transferred, pursuant to said Court's change of venue order, to the United States District Court for the District of Arizona, (3) the affidavit of Paul Ginsburg, dated May 5, 1958, in support of plaintiff Paul Ginsburg's motion for summary judgment, and (4) the affidavit of Carl F. Hollander dated May 7, 1958 in opposition to said motion and in support of defendant's cross-motion, and after hearing plaintiff Paul Ginsburg, appearing pro se in support of plaintiff's motion for a summary judgment and in opposition to defendant's cross-motion, and Haughton, Bell, attorney for said defendant, by Carl F. Hollander, of counsel, in opposition to plaintiff's motion for a summary judgment and in support of defendant's cross-motion, and due deliberation having been had thereon, it is

ORDERED

1. That plaintiff Paul Ginsburg's motion for a summary judgment be, and hereby is, denied.
2. ~~That defendant The Mutual Life Insurance Company of New York be regarded as not in default in this action.~~

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3. That the above mentioned affidavits of Arthur Kaiser dated July 1, 1953 and September 18, 1953 be regarded as constituting defendant's answer timely filed to the complaint herein setting forth as defendant's defense to said complaint the facts contained in said affidavits.

Order Entered June 27, 1958

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4. That plaintiff Paul Ginsburg be and hereby is permanently enjoined and prohibited ~~by this court~~ from prosecuting this action, or any other action for or on account of the amounts payable under or in any way connected with insurance policies #6149400 and 6149401 issued by the defendant other than the *action* in the U. S. Dist. Court for the Western Dist. of Pennsylvania (Civ. Ac. #115.21) ~~which said injunction and prohibition is in accordance with and in furtherance of the above mentioned order of the United States District Court for the Western District of Pennsylvania dated August 19, 1953.~~

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5. That this action be ~~designated and~~ marked as "enjoined" in this Court's files and records of this action ~~and that the Clerk and Calendar Commissioner of this Court be directed not to place this action on any Assignment Conference, Ready Day or any other Trial Calendar.~~

Dated: May ~~21st~~, 1958
June 27th

ALEXANDER BICKS
United States District Judge

Judgment Entered
June 27, 1958

HERBERT A. CHARLSON
Clerk

All changes have been initialed in the margin by AB.